

REMARKS

This Amendment is responsive to the Office Action mailed Sept. 21, 2005. Claims 5, 9, 14, 19, 20, 23 and 24 were pending. The prior indication of allowability was withdrawn in view of the newly cited reference to Whitney (U.S. Patent No. 4,597,384). Specifically, Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art (Fig. 2A), in view of Elkins (U.S. Patent No. 4,491,762) and further in view of Whitney. The remaining Claims were apparently rejected in view of the same art, in further view of Haugeneder. In response, the Applicant has amended the independent claims and provides the following remarks.

As understood by the Applicant, Whitney discloses a compressive sleeve having interior edges 126, 130 shaped generally like long sinusoidal waves in order to provide a sequential pressure. It is important to note that the disclosure of Whitney is very clear that the interior edge 130 needs to be configured "reversely" to edge 126 (col. 3:32 – 50). In contrast, the interior "fence" of the present invention has a much shorter period, in effect making a more jagged edge than what is disclosed by Whitney, with no requirement that there be two opposite facing edges. In addition, Whitney fails to disclose the need or desirability of the precise dot matrix pattern of attachments claimed in the present claims.

The present invention, as claimed in the amended claims, has a dot matrix pattern of attachments with an irregular border. Such a border is best delineated by a curvilinear fence, wherein the period is small compared to the border, in order to maintain uniform flow pressure around the edges of the wrap. Whitney does not teach nor disclose any such desire to utilize a curvilinear fence in connection with a dot matrix pattern of attachments. Moreover, Whitney fails to disclose that that curvilinear ripples should have a period substantially shorter than the length of the fence, forming an irregular border with respect to the dot matrix of attachments, in order to provide uniform flow and pressure. In fact, Whitney seems to suggest that the ripple should have a rather long, sweeping period. Such a long period would at least partially defeat the benefit of using the dot matrix attachment pattern in the first place, as many dots would be required to be placed "within" each half-period arc.

With respect to the number of references cited by the Office Action to support a rejection based on “obviousness”, the Applicant notes that, while there is no hard rule as to how many references are “too many”, the number of references cited against the present claims tends to show that the Office has engaged in impermissible “hindsight reconstruction.” In effect, the Applicant’s claims have been used as a blueprint for how to build the present invention, and the various components and structures were “found” in disparate prior art references, with no reference providing any teaching, suggestion or motivation that the combination could be made. As the Federal Circuit has held in *In re Fritch*, 23 USPQ 2d, 1780, 1784 (Fed. Cir. 1992):

It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” (quoting *In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988).

Similarly, here, the rejection is based on the combination of multiple references which themselves do not teach or suggest the present invention. As such, the obviousness rejection is improper, and the claims should be passed to issuance.

Additionally, the Applicant still contends (as argued in prior responses) that Haugeneder is not even a proper reference, since it is not analogous art. One skilled in art of designing heat exchange panels for use on a human body would not ever think to look to a floor heating element to determine how best to place a dot matrix pattern of attachments. As such, “one of skill in the art” could NOT be presumed to know and understand the teachings of Haugeneder, as applied to heat exchange panels for the human body.

In view of the present amendments, and the arguments noted above, it is now believed that this case is in condition for allowance. If the Examiner believes that a telephone conversation will expedite the prosecution of this case, the Examiner is requested to contact the undersigned attorney at the below listed number.


The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication and which may be required under 37 CFR §1.78 to Deposit Account No. 50-2603, **referencing Attorney Docket No. 358125.00300. A duplicate sheet is attached.**

Respectfully submitted,

REED SMITH LLP

Dated: February 13, 2006

By: _____

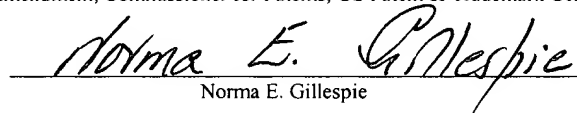

Name: Doyle B. Johnson
Registration No. 39,240
Attorneys for Applicants

Two Embarcadero Center, Suite 2000
P.O. Box 7936
San Francisco, CA 94120-7936
Direct Dial (415) 659-5969
(415) 543-8700 Telephone
(415) 391-8269 Facsimile

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, US Patent & Trademark Office, Alexandria, VA 22313-1450, on February 13, 2006.

Dated: February 13, 2006


Norma E. Gillespie